

Docket No. 11-7890

Ser. No. 10/621,765

REMARKS

The above amendments and following remarks are responsive to the Office Action of February 18, 2005. Reconsideration of the application and a notice of allowance are earnestly solicited.

Claims 1 and 2 are pending and have been amended to recite customary claim terminology.

The Examiner has objected to claims 1 and 2 for containing informalities. Applicant has amended the claims to obviate the objections.

The Examiner has rejected claims 1 and 2 for being anticipated by Calderon (EP 0767274A1). Applicant traverses the rejection as follows.

Claim 1 recites and Figures 18 and 19 illustrate that the support section (3') is "essentially flat without continuous, deep depressions" (and instead, the support section has outer edge depressions 21). However, Calderon illustrates in Figure 1 a tie 2 equipped with a housing 10 for guide plates (elbowed plates 3). The housing 10 is formed as continuous, longitudinal groove in the railroad tie 2. Accordingly, Calderon fails to teach a tie that is without a "continuous depression" and the rejection has been overcome. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) ("a claim is anticipated only if each and every element as set forth in the claim" is found in the cited prior art reference).

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If there is any fee(s) due the USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,
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